

CHAPTER 67

TRANSPORTATION

SENATE BILL 19-017

BY SENATOR(S) Zenzinger, Ginal, Todd, Bridges, Hisey, Scott, Sonnenberg, Story, Tate, Winter;
also REPRESENTATIVE(S) Roberts, McLachlan, Buentello.

AN ACT

CONCERNING THE EXEMPTION OF THE DEPARTMENT OF TRANSPORTATION FROM EXISTING REPORTING AND TRANSPORTATION COMMISSION APPROVAL REQUIREMENTS WHEN IT ACQUIRES LAND NEEDED FOR SPECIFIED HIGHWAY-RELATED PURPOSES BY MEANS OTHER THAN CONDEMNATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Section 43-1-208, Colorado Revised Statutes, has for many years specified that when the chief engineer of the department of transportation deems it desirable to establish a state highway or make specified types of changes to an existing state highway:

(I) The chief engineer must provide a written report to the transportation commission that describes the project and all land to be acquired for the project, includes a map of the existing and future boundaries of the highway, and estimates the damages and benefits to each affected landowner;

(II) The transportation commission must determine if the project will serve public interest or convenience and adopt a resolution authorizing the chief engineer to offer affected landowners appropriate compensation before the chief engineer may acquire land; and

(III) The department of transportation may acquire any land needed for the project by condemnation if the landowner declines the chief engineer's offer of compensation;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(b) Because the department of transportation must regularly acquire land adjacent to state highways and many acquisitions are routine, the transportation commission adopted a resolution in 1994 that directed the department to act on the transportation commission's behalf with respect to both the approval for land acquisition actions and the tendering of payments to landowners for damages in connection with previously approved highway projects;

(c) Thereafter, believing that the transportation commission had, through the 1994 resolution, authorized it to acquire land for the purposes specified in section 43-1-208, Colorado Revised Statutes, without obtaining additional commission approval for each acquisition, the department of transportation regularly acquired land without such additional approval for over twenty years; and

(d) In 2016, in *DOT v. Amerco Real Estate Co.*, 2016 CO 62, the Colorado Supreme Court held that:

(I) The transportation commission cannot legally delegate its section 43-1-208, Colorado Revised Statutes, obligations to make a determination of public interest or convenience and approve the payment of compensation to affected landowners before authorizing the department of transportation to acquire land for the purposes specified in the statute; and

(II) The 1994 resolution therefore did not grant the department of transportation authority to acquire land for the purposes specified in the statute without transportation commission approval and the transportation commission must instead determine if a project that requires the acquisition of land will serve public interest or convenience and adopt a resolution authorizing the chief engineer to offer affected landowners appropriate compensation as specified in the statute.

(2) The general assembly further finds and declares that:

(a) Because the department of transportation must regularly acquire land for the purposes set forth in section 43-1-208, Colorado Revised Statutes, and in most instances can do so with the agreement of the affected landowner and because of the *Amerco* decision, the reporting and transportation commission approval requirements of section 43-1-208, Colorado Revised Statutes, are, in most instances, unnecessary, administratively burdensome, and inefficient; and

(b) Because instances in which a landowner does not agree to sell the owner's land to the department of transportation are comparatively infrequent, it is necessary, appropriate, and not unduly burdensome to the state to continue to require reporting and transportation commission approval as specified in section 43-1-208, Colorado Revised Statutes, for those instances in which a petition in condemnation will be filed to acquire land for the purposes specified in the statute.

SECTION 2. In Colorado Revised Statutes, 43-1-208, **amend** (1) and (2); and **repeal** (3) as follows:

43-1-208. State highway - damages - eminent domain. (1) If the chief engineer ~~when he~~ deems it desirable to establish, open, relocate, widen, add mass transit to, or otherwise alter a portion of a state highway, NEGOTIATIONS TO ACQUIRE

THE LAND HAVE FAILED, AND THE CHIEF ENGINEER DETERMINES THAT FILING A PETITION IN CONDEMNATION PURSUANT TO ARTICLE 1 OF TITLE 38 IS NECESSARY or ~~when so required by~~ IF THE COMMISSION OTHERWISE SO REQUIRES, THE CHIEF ENGINEER shall make a written report to the commission describing the portion of the highway to be established, opened, added to, or changed and the ~~portions of land of each landowner to be taken for the purpose and~~ ACQUIRED BY A PETITION IN CONDEMNATION. THE CHIEF ENGINEER shall accompany ~~his~~ THE report with a map showing the present and proposed boundaries of the portion of the highway to be established, opened, added to, or changed, together with an estimate of the damages and benefits accruing to each landowner ~~whose land may be affected thereby~~ AGAINST WHOSE LAND A PETITION IN CONDEMNATION WILL BE FILED. THE CHIEF ENGINEER MAY ALSO ACQUIRE LAND BY PURCHASE OR EXCHANGE OR THROUGH NEGOTIATIONS PRIOR TO THE FILING OF A PETITION IN CONDEMNATION AND IS NOT REQUIRED TO PROVIDE ANY INFORMATION ABOUT LAND SO ACQUIRED TO THE COMMISSION UNDER THIS SECTION.

(2) If, upon receipt of ~~such~~ THE report AND AFTER PROVIDING TEN DAYS WRITTEN NOTICE TO THE AFFECTED LANDOWNER OF THE DATE, TIME, AND LOCATION OF THE COMMISSION MEETING AT WHICH A RESOLUTION TO AUTHORIZE A PROPOSED ACTION AND THE FILING OF A PETITION IN CONDEMNATION FOR LAND WILL BE CONSIDERED, WHICH NOTICE SHALL BE SENT BY FIRST CLASS MAIL TO THE MAILING ADDRESS, IF ANY, OF THE LAND THAT IS THE SUBJECT OF THE RESOLUTION AND ANY OTHER MAILING ADDRESS OF THE LANDOWNER USED FOR PURPOSES OF NEGOTIATIONS WITH THE LANDOWNER, AND PROVIDING THE LANDOWNER WITH AN OPPORTUNITY TO BE HEARD AT THE MEETING, ~~the commission decides that public interest or convenience will be served by the proposed change~~ ACTION AND THE FILING OF A PETITION IN CONDEMNATION FOR THE LAND PURSUANT TO ARTICLE 1 OF TITLE 38, it shall ~~enter~~ ADOPT a resolution ~~upon its minutes approving the same and authorizing the chief engineer to tender each landowner the amount of damages, as estimated by him and approved by the commission. In estimating the amount of damages to be tendered a landowner, due account shall be taken of any benefits which will accrue to such landowner by the proposed action. The amount of benefit shall not in any case exceed the amount of damages awarded.~~ ACTION AND THE FILING OF A PETITION IN CONDEMNATION FOR THE LAND. THEREUPON THE COMMISSION, ACTING THROUGH THE DEPARTMENT, SHALL PROCEED IN THE ACQUISITION OF THE LAND, UNDER ARTICLES 1 TO 7 OF TITLE 38, WITHOUT TENDER OR OTHER PROCEEDINGS UNDER THIS PART 2.

(3) ~~Any person owning land or having an interest in any land over which any proposed state highway extends who is of the opinion that the tender made to him by the transportation commission is inadequate, personally or by agent or attorney on or before ten days from the date of such tender, may file a written request addressed to the transportation commission for a jury to ascertain the compensation which he may be entitled to by reason of damages sustained by altering, widening, changing, or laying out such state highway. Thereupon the transportation commission shall proceed in the acquisition of such premises, under articles 1 to 7 of title 38, C.R.S. The transportation commission also has the power and is authorized to proceed in the acquisition of the lands of private persons for state highway purposes, according to said articles 1 to 7 of title 38, C.R.S., without tender or other proceedings under this part 2.~~

SECTION 3. In Colorado Revised Statutes, 38-1-202, **amend** (1) introductory portion and (1)(b)(IV)(I) as follows:

38-1-202. Governmental entities, corporations, and persons authorized to use eminent domain. (1) The following governmental entities, types of governmental entities, and public corporations, in accordance with all procedural and other requirements specified in this ~~article~~ ARTICLE 1 and articles 2 to 7 of this ~~title~~ TITLE 38 and to the extent and within any time frame specified in the applicable authorizing statute, may exercise the power of eminent domain:

(b) The state:

(IV) By action of the general assembly or by action of any of the following officers and agencies of the state:

(I) The transportation commission created in section 43-1-106, ~~C.R.S.~~, as authorized in ~~section 43-1-208 (3), C.R.S.~~ SECTION 43-1-208 (2);

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 28, 2019